



August 10, 2001

Ms. Ann-Marie P. Sheely
Assistant County Attorney
Travis County Attorney's Office
P.O. Box 1748
Austin, Texas 78767

OR2001-3508

Dear Ms. Sheely:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 150572.

The Travis County Attorney's Office (the "county attorney") received a request for information relating to "any arrests, prosecutions or convictions of [a named individual], specifically including any arrests and prosecutions of [the individual] for an automobile accident occurring on or about June 28, 2000." You claim that the requested information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you raise and have reviewed the information you submitted.

We first address your claim that this request for information implicates the common law privacy rights of the named individual. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception encompasses the common law right of privacy. Information must be withheld from disclosure under section 552.101 in conjunction with common law privacy when (1) the information is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *See Industrial Found. v. Texas Ind. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). When a law enforcement agency compiles criminal history information concerning a particular individual, the compiled information takes on a character that implicates the individual's right of privacy in a manner that the same information in an uncompiled state does not. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989); *see also* Open Records Decision No. 616 at 2-3 (1993).

The request in this instance is for, among other things, unspecified law enforcement records concerning a named individual. We agree that the request for unspecified records implicates this individual's privacy rights. Thus, to the extent that the county attorney maintains law enforcement records that list this individual as a suspect, other than records that relate to the June 28, 2000 accident, such records must be withheld in their entirety under section 552.101 in conjunction with *Reporters Committee*.

However, the requestor also has specifically asked for records relating to the June 28, 2000 accident. Therefore, we will address your exceptions to the disclosure of the records that relate to that accident. We first note that these records come within the scope of section 552.022 of the Government Code. Section 552.022(a) provides in part that

the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body[.]

Gov't Code § 552.022(a)(1) (emphasis added). You inform this office that the records in question pertain to a concluded criminal investigation. Therefore, these records must be released under section 552.022(a)(1), except to the extent that they contain confidential information.

Criminal history record information ("CHRI") obtained from the National Crime Information Center ("NCIC") or the Texas Crime Information Center ("TCIC") is confidential under federal law and subchapter F of chapter 411 of the Government Code. The dissemination of CHRI obtained from the NCIC network is governed by federal law. Federal regulations prohibit the release to the general public of CHRI that is maintained in state and local CHRI systems. *See* 28 C.F.R. § 20.21(c)(1) ("Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given.") and (c)(2) ("No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself."); *see also* Open Records Decision No. 565 at 10-12 (1990). The federal regulations allow each state to follow its own individual law with respect to CHRI that it generates. *See* ORD 565 at 10-12. Sections 411.083(b)(1) and 411.089(a) of the Government Code authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *See* Gov't Code § 411.089(b). Thus, any CHRI generated by the federal government or another state may be disclosed only in accordance with the federal regulations. Furthermore, any CHRI obtained from the Texas Department of Public Safety (the "DPS") or any other criminal justice agency must be withheld as provided by subchapter F of chapter 411 of the Government Code. You indicate that the requested information includes CHRI that was obtained from DPS. This information must be withheld from the requestor under section 552.101 of the Government Code in conjunction with federal law and subchapter F of chapter 411 of the Government Code.

The submitted records also contain information that is protected by common law privacy under section 552.101. Common law privacy protects the specific types of information that the Texas Supreme Court held to be intimate or embarrassing in *Industrial Foundation*. See 540 S.W.2d at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). This office has since concluded that other types of information also must be withheld under section 552.101 in conjunction with common law privacy. See Open Records Decision No. 659 at 4-5 (1999); see also Open Records Decision Nos. 470 at 4 (1987) (illness from severe emotional job-related stress), 455 at 9 (1987) (prescription drugs, illnesses, operations, and physical handicaps), 343 at 1-2 (1982) (references in emergency medical records to a drug overdose, acute alcohol intoxication, obstetrical/gynecological illness, convulsions/seizures, or emotional/mental distress). We have marked the information that the county attorney must withhold under section 552.101 in conjunction with common law privacy.

A social security number may be confidential under section 552.101 of the Government Code in conjunction with 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), *if the social security number was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990*. See Open Records Decision No. 622 at 2-4 (1994). It is not apparent to this office that the social security numbers in question were obtained or are maintained by the county attorney pursuant to any provision of law enacted on or after October 1, 1990. You have cited no law, nor are we aware of any law, enacted on or after October 1, 1990, that authorizes the county attorney to obtain or maintain a social security number. We therefore have no basis for concluding that the social security numbers in question were obtained or are maintained pursuant to such a law and are therefore confidential under section 405(c)(2)(C)(viii)(I) of the federal law. We caution you, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Therefore, prior to releasing any social security number, you should ensure that it was not obtained and is not maintained pursuant to any provision of law enacted on or after October 1, 1990.

You also raise section 552.130 of the Government Code. Section 552.130 provides in relevant part:

(a) Information is excepted from [required public disclosure] if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]

(2) a motor vehicle title or registration issued by an agency of this state[.]

Gov't Code § 552.130(a)(1)-(2). You must withhold Texas driver's license, license plate, and vehicle identification numbers under section 552.130.

In summary, some of the requested records are confidential under federal law and subchapter F of chapter 411 of the Government Code. You must withhold these records under section 552.101 of the Government Code. You also must withhold information that is confidential under section 552.101 in conjunction with common law privacy. A social security number may be confidential under section 552.101 in conjunction with federal law. A Texas driver's license, license plate, or vehicle identification number must be withheld under section 552.130 of the Government Code. The remaining information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

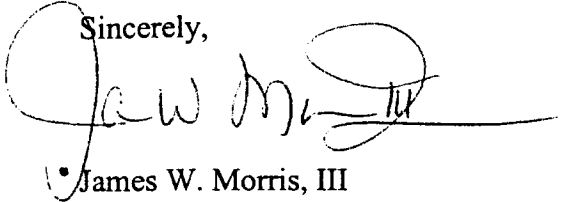
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "J W Morris III", with a long horizontal flourish extending to the right.

• James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 150572

Enc: Marked documents

c: Ms. Joanna R. Lippman
Fletcher & Springer, L.L.P.
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(w/o enclosures)